

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ZEBEDEE BROWN,)
)
)
Petitioner,)
)
)
v.) 1:14CV497
)
)
GUILFORD COUNTY JUDICIARY,)
N.C., et al.,)
)
)
Respondent.)

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a document entitled as “Petition for a Writ of Habeas Corpus of: Zebedee Brown.” Even though Petitioner has not used the correct forms for a habeas corpus petition under 28 U.S.C. § 2254, it appears that Petitioner seeks to attack his state court criminal convictions. Given that the proper avenue for such an attack is ordinarily a petition for habeas corpus under § 2254, the Court will construe the submission as such a petition. For the following reasons, the Petition cannot be further processed.

1. The filing fee was not received, nor was an affidavit to proceed *in forma pauperis* submitted and signed by Petitioner.
2. Petitioner has not used the required § 2254 Forms. Rule 2, R. Gov. § 2254 Cases. The Clerk will forward to Petitioner the proper forms.
3. Petitioner does not name his custodian as the respondent. Rule 2, Rules Governing Section 2254 Cases, requires that the petition name the state officer having custody of the applicant as respondent.

4. Petitioner does not appear to state any proper claim for relief. His submission is a rambling series of documents related to the “Moorish American National Government.” Petitioner claims that he is a “Moorish American” and seeks his release from the custody of North Carolina and into the custody of the “Moorish American National Government.” Petitioner is not the first person to raise this or similar claims based on an alleged status as a “Moorish American” or related terms, and courts routinely reject such claims. See Pitt-Bey v. District of Columbia, 942 A.2d 1132, 1136 (D.C. 2008); Albert Fitzgerald Brockman-El v. N.C. Dept. of Corr., No. 1:09CV633, Docket Nos. 2, 6, 7 (M.D.N.C. 2009), appeal dismissed, 373 F. App’x 332 (4th Cir. 2010). A person’s alleged nationality or ethnicity does not somehow absolve that person of criminal responsibility.

Because of these pleading failures, the Petition will be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, and otherwise correcting the defects noted.¹ To further aid Petitioner, the Clerk is instructed to send Petitioner a new application to proceed *in forma pauperis*, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation of dismissal without prejudice to filing a new petition which corrects the defects of the present Petition.

¹ Because Petitioner’s submission is being dismissed without prejudice and is not being decided on its merits, this case will not count as a first petition which would later trigger the prohibitions against second or successive petitions found in 28 U.S.C. § 2244(b). However, if Petitioner chooses to later submit a § 2254 petition that conforms with this Order and Recommendation, he should be aware that he is normally entitled to have only one § 2254 petition decided on its merits. Second or successive petitions are barred from consideration by this Court unless a petitioner first receives permission from the Fourth Circuit Court of Appeals to file such a petition. 28 U.S.C. § 2244(b). That permission is granted only in very narrow circumstances. Because of this, Petitioner should act carefully in resubmitting a petition. See generally Castro v. United States, 540 U.S. 375 (2003). If Petitioner wishes to challenge his conviction, he must use the § 2254 forms supplied by the Court, include all of the claims for relief he wishes to raise, and closely follow the instructions provided. Petitioner may also choose not to submit a petition. Finally, if Petitioner wants a form of relief other than relief from his conviction or sentence, he should make that clear in any new submission and should state that he is not seeking to attack his conviction or sentence. He should not use the § 2254 forms in that instance.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

IT IS RECOMMENDED that this action be construed as a habeas petition under 28 U.S.C. § 2254 and dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition. The new petition must be accompanied by either the five dollar filing fee or a current application to proceed *in forma pauperis*.

This, the 17th day of June, 2014.

/s/ Joi Elizabeth Peake
United States Magistrate Judge